

AMENDED IN ASSEMBLY MAY 3, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1726**

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**Introduced by Assembly Member Swanson**

February 3, 2010

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An act to amend Section 1363.03 of the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL’S DIGEST

AB 1726, as amended, Swanson. Common interest developments: ballots: quorums.

The Davis-Stirling Common Interest Development Act governs the establishment and management of common interest developments. These provisions require that a common interest development be managed by an association and that elections related to the governance or administration of the common interest development conform to specified requirements, including the establishment of a quorum. Existing law provides for votes on specified matters to be held by secret ballot and requires the ballots to be sent, with 2 preaddressed envelopes, to each member of the association, in accordance with the model used by California counties for ensuring confidentiality of “vote by mail” ballots.

This bill would clarify that the ballots are mailed in accordance with the model used by California counties for ensuring confidentiality of “voter absentee” ballots, and would specify that each ballot be placed

into an inner envelope that is sealed and then placed into an outside mailing envelope addressed to the inspector for the election.

This bill would provide that, except for associations whose governing documents provide for a reduced quorum, as provided, the quorum required for purposes of a subsequent members' meeting *scheduled for that particular election only* or election of directors would require a quorum of 33% of the association membership entitled to vote. This bill would require that these provisions be disclosed in the members' election materials mailed to the members. This bill would also provide that these provisions do not apply to any other part of the act.

This bill would also make technical, clarifying changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1363.03 of the Civil Code is amended
- 2 to read:
- 3 1363.03. (a) An association shall adopt rules, in accordance
- 4 with the procedures prescribed by Article 4 (commencing with
- 5 Section 1357.100) of Chapter 2, that do all of the following:
- 6 (1) Ensure that if any candidate or member advocating a point
- 7 of view is provided access to association media, newsletters, or
- 8 Internet Web sites during a campaign, for purposes that are
- 9 reasonably related to that election, equal access shall be provided
- 10 to all candidates and members advocating a point of view,
- 11 including those not endorsed by the board, for purposes that are
- 12 reasonably related to the election. The association shall not edit
- 13 or redact any content from these communications, but may include
- 14 a statement specifying that the candidate or member, and not the
- 15 association, is responsible for that content.
- 16 (2) Ensure access to the common area meeting space, if any
- 17 exists, during a campaign, at no cost, to all candidates, including
- 18 those who are not incumbents, and to all members advocating a
- 19 point of view, including those not endorsed by the board, for
- 20 purposes reasonably related to the election.
- 21 (3) Specify the qualifications for candidates for the board of
- 22 directors and any other elected position, and procedures for the
- 23 nomination of candidates, consistent with the governing documents.

1 (4) A nomination or election procedure shall not be deemed  
2 reasonable if it disallows any member of the association from  
3 nominating himself or herself for election to the board of directors.

4 (5) Specify the qualifications for voting, the voting power of  
5 each membership, the authenticity, validity, and effect of proxies,  
6 and the voting period for elections, including the times at which  
7 polls will open and close, consistent with the governing documents.

8 (6) Specify a method of selecting one or three independent third  
9 parties as inspector, or inspectors, of election utilizing one of the  
10 following methods:

11 (A) Appointment of the inspector or inspectors by the board.

12 (B) Election of the inspector or inspectors by the members of  
13 the association.

14 (C) Any other method for selecting the inspector or inspectors.

15 (7) Allow the inspector, or inspectors, to appoint and oversee  
16 additional persons to verify signatures and to count and tabulate  
17 votes as the inspector or inspectors deem appropriate, provided  
18 that the persons are independent third parties.

19 (b) Notwithstanding any other law or provision of the governing  
20 documents, elections regarding assessments legally requiring a  
21 vote, election and removal of members of the association board  
22 of directors, amendments to the governing documents, or the grant  
23 of exclusive use of common area property pursuant to Section  
24 1363.07 shall be held by secret ballot in accordance with the  
25 procedures set forth in this section. A quorum shall be required  
26 only if so stated in the governing documents of the association or  
27 other provisions of law. If a quorum is required by the governing  
28 documents, each outside mailing envelope completed pursuant to  
29 subdivision (f) received by the inspector of elections shall be  
30 treated as a member present at a meeting for purposes of  
31 establishing a quorum. An association shall allow for cumulative  
32 voting using the secret ballot procedures provided in this section,  
33 if cumulative voting is provided for in the governing documents.

34 (c) (1) The association shall select an independent third party  
35 or parties as an inspector of election. The number of inspectors of  
36 election shall be one or three.

37 (2) For the purposes of this section, an independent third party  
38 includes, but is not limited to, a volunteer poll worker with the  
39 county registrar of voters, a licensee of the California Board of  
40 Accountancy, or a notary public. An independent third party may

1 be a member of the association, but may not be a member of the  
2 board of directors or a candidate for the board of directors or related  
3 to a member of the board of directors or a candidate for the board  
4 of directors. An independent third party may not be a person,  
5 business entity, or subdivision of a business entity that is currently  
6 employed by or under contract with the association for any  
7 compensable services unless expressly authorized by rules of the  
8 association adopted pursuant to paragraph (6) of subdivision (a).

9 (3) The inspector or inspectors of election shall do all of the  
10 following:

11 (A) Determine the number of memberships entitled to vote and  
12 the voting power of each.

13 (B) Determine the authenticity, validity, and effect of proxies,  
14 if any.

15 (C) Receive ballots.

16 (D) Hear and determine all challenges and questions in any way  
17 arising out of or in connection with the right to vote.

18 (E) Count and tabulate all votes.

19 (F) Determine when the polls shall close, consistent with the  
20 governing documents.

21 (G) Determine the tabulated results of the election.

22 (H) Perform any acts as may be proper to conduct the election  
23 with fairness to all members in accordance with this section, the  
24 Corporations Code, and all applicable rules of the association  
25 regarding the conduct of the election that are not in conflict with  
26 this section.

27 (4) An inspector of election shall perform his or her duties  
28 impartially, in good faith, to the best of his or her ability, and as  
29 expeditiously as is practical. If there are three inspectors of election,  
30 the decision or act of a majority shall be effective in all respects  
31 as the decision or act of all. Any report made by the inspector or  
32 inspectors of election is prima facie evidence of the facts stated in  
33 the report.

34 (d) For purposes of this section, the following definitions shall  
35 apply:

36 (1) "Proxy" means a written authorization signed by a member  
37 or the authorized representative of the member that gives another  
38 member or members the power to vote on behalf of that member.

39 (2) "Sign or signed" means the placing of the member's name  
40 on the proxy (whether by manual signature, typewriting, telegraphic

1 transmission, or otherwise) by the member or authorized  
2 representative of the member.

3 (e) Proxies shall not be construed or used in lieu of a ballot. An  
4 association may use proxies if permitted or required by the bylaws  
5 of the association and if those proxies meet the requirements of  
6 this article, other laws, and the association's governing documents,  
7 but the association shall not be required to prepare or distribute  
8 proxies pursuant to this section. Any instruction given in a proxy  
9 issued for an election that directs the manner in which the proxy  
10 holder is to cast the vote shall be set forth on a separate page of  
11 the proxy that can be detached and given to the proxy holder to  
12 retain. The proxy holder shall cast the member's vote by secret  
13 ballot. The proxy may be revoked by the member prior to the  
14 receipt of the ballot by the inspector of elections as described in  
15 Section 7613 of the Corporations Code.

16 (f) Ballots and two preaddressed envelopes with instructions  
17 on how to return ballots shall be mailed by first-class mail or  
18 delivered by the association to every member not less than 30 days  
19 prior to the deadline for voting. In order to preserve confidentiality,  
20 a voter may not be identified by name, address, or lot, parcel, or  
21 unit number on the ballot. The association shall use as a model  
22 those procedures used by California counties for ensuring  
23 confidentiality of voter absentee ballots, including all of the  
24 following:

25 (1) The ballot itself is not signed by the voter, but is inserted  
26 into an inner envelope that is sealed. The envelope is inserted into  
27 an outside mailing envelope that is sealed. In the upper left-hand  
28 corner of the outside mailing envelope, the voter shall sign his or  
29 her name and indicate the address or separate interest identifier  
30 that entitles him or her to vote.

31 (2) The outside mailing envelope is addressed to the inspector  
32 or inspectors of election, who will be tallying the votes. The  
33 envelope may be mailed or delivered by hand to a location  
34 specified by the inspector or inspectors of election. The member  
35 may request a receipt for delivery.

36 (g) All votes shall be counted and tabulated by the inspector or  
37 inspectors of election or his or her designee in public at a properly  
38 noticed open meeting of the board of directors or members. Any  
39 candidate or other member of the association may witness the  
40 counting and tabulation of the votes. No person, including a

1 member of the association or an employee of the management  
2 company, shall open or otherwise review any ballot prior to the  
3 time and place at which the ballots are counted and tabulated. The  
4 inspector of election, or his or her designee, may verify the  
5 member's information and signature on the outside mailing  
6 envelope prior to the meeting at which ballots are tabulated. Once  
7 a secret ballot is received by the inspector of elections, it shall be  
8 irrevocable.

9 (h) The tabulated results of the election shall be promptly  
10 reported to the board of directors of the association and shall be  
11 recorded in the minutes of the next meeting of the board of  
12 directors and shall be available for review by members of the  
13 association. Within 15 days of the election, the board shall  
14 publicize the tabulated results of the election in a communication  
15 directed to all members.

16 (i) The sealed ballots at all times shall be in the custody of the  
17 inspector or inspectors of election or at a location designated by  
18 the inspector or inspectors until after the tabulation of the vote,  
19 and until the time allowed by Section 7527 of the Corporations  
20 Code for challenging the election has expired, at which time  
21 custody shall be transferred to the association. If there is a recount  
22 or other challenge to the election process, the inspector or  
23 inspectors of election shall, upon written request, make the ballots  
24 available for inspection and review by an association member or  
25 his or her authorized representative. Any recount shall be conducted  
26 in a manner that preserves the confidentiality of the vote.

27 (j) After the transfer of the ballots to the association, the ballots  
28 shall be stored by the association in a secure place for no less than  
29 one year after the date of the election.

30 (k) Notwithstanding any other provision of law, the rules  
31 adopted pursuant to this section may provide for the nomination  
32 of candidates from the floor of membership meetings or nomination  
33 by any other manner. Those rules may permit write-in candidates  
34 for ballots.

35 (l) Except for the meeting to count the votes required in  
36 subdivision (f), an election may be conducted entirely by mail  
37 unless otherwise specified in the governing documents.

38 (m) The provisions of this section apply to both incorporated  
39 and unincorporated associations, notwithstanding any contrary  
40 provision of the governing documents.

1 (n) The procedures set forth in this section shall apply to votes  
2 cast directly by the membership, but do not apply to votes cast by  
3 delegates or other elected representatives.

4 (o) In the event of a conflict between this section and the  
5 provisions of the Nonprofit Mutual Benefit Corporation Law (Part  
6 3 (commencing with Section 7110) of Division 2 of Title 1 of the  
7 Corporations Code) relating to elections, the provisions of this  
8 section shall prevail.

9 (p) (1) Except for associations whose governing documents  
10 provide for a reduced quorum for an adjourned members' meeting  
11 or election of directors that could not be held due to the failure to  
12 obtain a quorum, the quorum required for purposes of a subsequent  
13 members' meeting *scheduled for that particular election only* or  
14 election of directors shall be 33 percent of the association  
15 membership entitled to vote.

16 (2) The association shall disclose the provisions of paragraph  
17 (1) in the members' election materials that are mailed to the  
18 members.

19 (3) The provisions of paragraph (1) shall only apply to this  
20 section and are not applicable to any other provision in this title.